IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1900.

THE WABASH RAILROAD COMPANY,
Plaintiff in Error,

vs.

PETER TOURVILLE,
Defendant in Error.

No. 250.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED APRIL 4, 1899 (17,353).

STATEMENT.

This is a suit against the Wabash Railroad Company (of Missouri) for $81, due plaintiff for wages earned, "UNDER A CONTRACT MADE IN SAID STATE (MISSOURI), UNDER WHICH SAID CONTRACT SAID WAGES WERE PAYABLE IN THE CITY OF ST. LOUIS, MISSOURI, AND NOT ELSEWHERE. (Trans., p. 5.)

Plaintiff is the head of a family, residing with the same, in the State of Missouri, and has no property, excepting his wearing apparel; therefore, under the laws of Missouri, the wages here sued for are exempt from attachment, execution or garnishment.

(Trans., p. 4, Rev. Stat. Mo. 1899, Secs. 3158, 3159, 3435.) And, under the laws of Illinois, in force at the time the Second Garnishment Proceedings hereinafter described were instituted, said wages due a citizen of Missouri were also exempt from garnishment in Illinois. (Laws Ill. 1891, p. 141, Sec. 3, in evidence. Starr & Curt, Ill. Stat., Chap. 52, par. 22.)

The Wabash Railroad Co. is a consolidated Railway Corporation SEPARATELY ORGANIZED under the laws of Illinois and Missouri. (Trans., p. 4.)

This suit was begun before a Justice of the Peace, at St. Louis, Missouri, **June 10, 1891.** The defendant made default in the Justice's Court, and thereafter took an appeal to the Circuit Court.

On June 3, 1891, one Flannigan, a resident of Illinois, instituted a suit against plaintiff, by attachment, and on the same day the Wabash R. Co. (of Illinois) was served with notice of garnishment (Trans., p. 4) (which suit will be hereinafter designated as the First Garnishment Proceedings). Flannigan obtained judgment, under the First Garnishment Proceedings, against said garnishee for the amount of wages due plaintiff from the Wabash R. Co. (of Missouri), less $50 exemptions allowed the head of a family under the laws of Illinois; and this judgment was paid under execution by the Wabash R. Co. (of Illinois).

On January 6, 1892, when this case came on for trial in the St. Louis Circuit Court, it was submitted on an agreed statement of facts, set forth in the proceedings. (Trans., pp. 4 and 5.) The defendant, the Wabash R. Co. (of Missouri) interposed the judgment in the First Garnishment Proceedings as a defense, in part to plaintiff's action, and the Circuit Court allowed the same as a credit on plaintiff's demand. Both parties appealed to the St. Louis Court of Appeals. Where, on **March 26, 1895,** the judgment was reversed and the cause remanded "WITH DI-

RECTIONS TO THE CIRCUIT COURT TO ENTER JUDGMENT FOR PLAINTIFF FOR $81, THE AMOUNT SUED FOR."

THIS JUDGMENT OF THE ST. LOUIS COURT OF APPEALS WAS A FINAL JUDGMENT AND WAS NOT APPEALED FROM.

Afterward, on April 1, 1895, Flannigan, in the State of Illinois, instituted a Second Garnishment Proceedings before the same Justice of the Peace, and the Wabash R. Co. (of Illinois) was again served with notice of garnishment. **The debt sought to be impounded by the Second Garnishment Proceedings is the same debt impounded by the First Garnishment Proceedings (Trans., p. 12) and on execution under the judgment in those proceedings paid by the Wabash R. Co. (of Illinois) to Flannigan.**

Under the laws of Illinois a garnishee is required to appear and defend the garnishment proceedings. (Trans., p. 6.)

The garnishee in Illinois, the Wabash R. Co. (of Illinois), although it had paid the judgment in the First Garnishment Proceedings impounding the same debt in the same court, filed an answer in the Second Garnishment Proceedings admitting the indebtedness. and when the cause was called for trial, instead of defending as required to do by the laws of Illinois, made default, and judgment was rendered against it on its answer. It does not appear that this judgment has ever been collected or any attempt made to collect it. So that the inference is that the failure of the garnishee to defend the Second Garnishment Proceedings, and its failure to show in evidence the payment of the same debt to that plaintiff under the judgment obtained in the same court in the First Garnishment Proceedings was a prearranged plan between Flannigan and the garnishee, designed to allow the former to obtain judgment against the garnishee in Illinois with which to try and defeat the judgment in this case.

The Justice of the Peace, in Illinois, before whom the Second Garnishment Proceedings were had, has jurisdiction only in St. Clair County, Illinois, and the Constable under him has jurisdiction in serving process only in said St. Clair County. The Constable's return on the notice of garnishment is, "executed the within notice by posting one notice at M. Joyce's store, and one notice at the Workingman's Bank and one notice at the Justice's office." etc.

Nowhere in the Constable's return does it appear that these notices were posted in St. Clair County, Illinois. (Trans., p. 17.)

During the pendency of the Second Garnishment Proceedings in Illinois, the mandate of the St. Louis Court of Appeals in this case reached the Circuit Court, and on **May 3, 1895**, the Circuit Court entered judgment for the plaintiff for $81, as directed so to do by the judgment of the St. Louis Court of Appeals. (See Proceedings, Trans., pp. 10, 12.)

From this judgment the Wabash R. Co. (of Missouri) duly prosecuted its appeal to the Supreme Court of Missouri, and the case has been brought here upon writ of error.

The statement in the Supplemental Brief of plaintiff in error, on page 6 thereof, in regard to the "last trial" and prayer "for a stay of the proceedings in the Missouri Court" may be misleading, inasmuch as there was no "last trial" or "prayer" for a stay of the proceedings in the Missouri Court. When the mandate of the St. Louis Court of Appeals reached the St. Louis Circuit Court, and that Court was about to enter the judgment directed to be entered by the mandate of the Appellate Court, the defendant offered in evidence the affidavit, Attachment Bond and Writ of Attachment with the service thereon, in the Second Garnishment Proceedings, and the Circuit Court sustained plaintiff's objection to the introduction of

these papers in evidence (Trans., pp. 10, 12), and performed the purely ministerial act of entering the judgment directed by the Appellate Court.

We refer this Court to the statement of the case in the opinion of the Supreme Court of Missouri (Trans., pp. 25, 26), and in addition thereto direct the Court's particular attention to the following facts

This case was begun in Missouri nearly five years before the Second Garnishment Proceedings in Illinois were commenced.

The judgment of the St. Louis Court of Appeals in this case was rendered in Missouri four days before the Second Garnishment Proceedings in Illinois were commenced.

Under the contract sued on in this case plaintiff's wages were payable in the City of St. Louis, Missouri, and not elsewhere.

The judgment of the St. Louis Court of Appeals has not been appealed from.

Plaintiff is the head of a family residing in the State of Missouri. The wages here sued for are, under the laws of Missouri, exempt and not subject to garnishment. And, under the laws of Illinois, in force at the time the Second Garnishment Proceedings were commenced as a resident of Missouri, in Illinois plaintiff was entitled to the same exemptions.

If the garnishee had appeared and defended the Second Garnishment Proceedings as required to do under the laws of Illinois, the Illinois statute or any of the jurisdictional facts herein set forth would have been a complete defense.

POINTS AND AUTHORITIES.

I.

(*a*) **A judgment of a superior court remanding a case to an inferior court for entry of judgment, and leaving no judicial discretion to the latter as to further proceedings, is final. Therefore the judgment of the St. Louis Court of Appeals is** *res adjudicata.*

Smith v. Adams, 130 U. S. 167-177;
Winthrop v. Meeker, 119 U. S. 180.

Dainese v. Kendall, 119 U. S. 53-55. (**Citing**, Bostwick v. Brinkerhoff, 106 U. S. 3; Grant v. Phoenix Ins. Co. 106 U. S. 429, 431; St. Louis, etc., R. Co. v. Southern Exp. Co. 108 U. S. 24, 28; *Ex Parte* Norton, 108 U. S. 237, 242; Mower v. Fletcher, 114 U. S. 127.)

Bostwick v. Brinkerhoff, 106 U. S. 3. (**Citing** Whiting v. Bank, 13 Pet. 6, 15; Forgay v. Conrad, 6 How. 204; Craighead v. Wilson, 18 How. 199, 201; Beebe v. Russel, 19 How. 283; Branson v. R. R. Co. 2 Black 524; Thomson v. Dean, 7 Wall. 342; St. Clair Co. v. Lovingston, 18 Wall. 628; R. R. Co. v. Swasey, 23 Wall. 405, 409; Crosby v. Buchnan, 23 Wall. 420, 453; Comrs. v. Lucas, 93 U. S. 108, 113; Parcels v. Johnson, 20 Wall. 654.)

Talley v. Curtain, 58 F. R. 5;
Merrian v. Chgo., etc., R. Co. 64 F. R. 535, 547;
1 Black on Judgments, p. 34;
McKinney v. Harrel, 36 Mo. App. 337;
Teichman v. Amer. Bank, 35 Mo. App. 472;
Belch v. Miller, 37 Mo. App. 628;
Lane v. Chicago, etc., R. Co. 35 Mo. App. 567;
Crecelius v. Bierman, 68 Mo. App. 34;
Southwest Lead Co. v. Phoenix Co., 41 Mo. App. 406;
Gibbons v. Ogden, 19 U. S. 448.

(*b*) **Said judgment being final, the Circuit Court had no power to reopen the case and hear the evidence offered by defendant; or to adjudicate the rights of defendant which accrued pending the**

appeal, or to consider or determine matters not included in the duty of entering the judgment as directed.

Young v. Thrasher, 123 Mo. 312;
State *ex. rel.* v. Edwards, 144 Mo. 467;
Rees v. McDaniel, 131 Mo. 681;
Stump v. Hornback, 109 Mo. 272.

II.

The Second Garnishment Proceedings in Illinois are void for want of jurisdiction.

(*a*) **Constructive service can confer no jurisdiction unless the requirements of the statute have been strictly complied with, and the record must show affirmatively that jurisdiction of defendant has been properly acquired.**

Thormeyer v. Sisson, 83 Ill. 188;
Haywood v. Collins, 60 Ill. 328;
R. S. Ill. (Starr & C. Ed.) 1896, Ch. LI., Secs. 50-53. p. 473;
Hinman v. Andrews Opera Co., 49 Ill. App. 135;
People v. Jarrett, 7 Ill. App. 566;
Evans v. Pierce, 3 Ill. 469, followed in Bines v. Proctor, 5 Ill. 174, cited in Nelson v. Rockwell, 14 Ill. 377;
Baldwin v. Ferguson, 35 Ill. App. 394.
See also *post* III.

(*b*) **The record of the Second Gainishment Proceedings failing to show proper service on Tourville, tbe presumption is conclusive that the judgment is void.**

1 Wade on Attach., Sec. 47;
Morrow v. Weed, 4 Iowa, 77;
Tift v. Griffin, 5 Ga. 185;
Chemung Canal Bank v. Judson, 8 N. Y. 254;
Williams v. St. Louis, etc., R. Co., 8 Mo. App. 135;
Haywood v. Collins, 60 Ill. 328;
Haywood v. McCrary, 33 Ill. 459.

(*c*) **In Illinois Justices of the Peace have jurisdiction only in "their respective Counties."**

Starr v. Curtis Ann., Ill. Stat., Ch. 79, par. 16.

(*d*) **The judgment of the Illinois Court in the Second Garnishment Proceedings, as well as in the First, being void for want of jurisdiction, even though it had been prior to this judgment, would be no protection.**

2 Wade on Attach., Secs. 401 and 46;
1 Freeman on Judg., Sec. 120 and cases cited;
Mercier v. Chace, 9 Allen 242;
Houston v. Musgrove, 35 Tex. 594;
Ponder v. Mosely, 2 Fla. 207, 267;
Shriver v. Linn, 2 How. 43;
Noble v. Thompson Oil Co., 79 Pa. Stat. 354;
Borden v. Fitch, 15 Johns, 121;
Gage v. Hill, 43 Barb. 44;
Bissell v. Briggs, 9 Mass. 438;
Shumway v. Stillman, 4 Cowen, 392.

(*e*) **Flannigan stood in the shoes of Tourville and could not be placed in a better position than was Tourville himself.**

Weil v. Tyler, 38 Mo. 545;
Heege v. Fruin, 18 Mo. App. 141;
McPherson v. R. Co. 66 Mo. 103;
Funkhouser v. Eveland, 3 Mo. App. 602;
Myer v. Ins. Co., 40 Md. 596.

III.

(*a*) **"A garnishee must for his own protection see that jurisdiction of the defendant has been properly acquired by the Court."**

Tourville v. Wabash R. Co., 61 Mo. App. 532;
Drake on Attachments, Sec. 695;
McCloon v. Beattie, 46 Mo. 391;
Epstein v. Salorgne, 6 Mo. App. 352.

(*b*) And plead the defendant's exemptions.

Chicago, etc., R. Co. v. England, 84 Ill. 376;
Chicago, etc., R. Co. v. Mason, 11 Ill. App. 525.

(*c*) **Had the garnishee introduced the Illinois Statute in the Second Garnishment Proceedings instead of making default, judgment would not have gone against it.**

Laws Ill. 1891, p. 141, Sec. 3.

IV.

THE PENDENCY OF THIS SUIT AGAINST THE GARNISHEE WILL DEFEAT THE SUBSEQUENT GARNISHMENT PROCEEDING IN A COURT OF ANOTHER JURISDICTION.

Wallace v. McConnell, 13 Pet. 136;
Mack v. Winslow, 59 Fed. Rep. 319;
Burke v. Hance, 76 Tex. 76;
Wood v. Lake, 13 Wis. 94.

V.

A DEBT DUE ON A JUDGMENT IN ONE JURISDICTION CANNOT BE GARNISHEED IN ANOTHER JURISDICTION. The debt due Tourville on the judgment of the St. Louis Court of Appeals was not subject to garnishment in the courts of Illinois.

Mower v. Fletcher, 114 U. S. 127;
Henry v. Gold Co., 15 Fed. Rep. 649; S. C. 5 McCreary, 70;
Loomis v. Carrington, 18 Fed. Rep. 97;
Tourville v. Wabash, 148 Mo. 614;
Drake on Attachments (7th Ed.), Sec. 625;
Sewers v. Woodburn Co., 43 Mich. 275;
Young v. Young, 2 Hill (S. C.), 426;
Franklin v. Ward, 3 Mason, 136;
Coldfelter v. Cox, 1 Sneed (Tenn.), 336.

A judgment in one State is not the subject of garnishment in another State.

Reiner v. Hurlbut, 81 Wis. 32;
American Bank v. Snow, 9 R. I. 11;
Shinn v. Zimmerman, 3 Zab. 150;
Jones v. N. Y. & C. R. Co., 1 Grant. 457.

A judgment of Federal Court is not subject to Garnishment in State court.

Henry v. Gold P. Co., *supra;*
Burrell v. Letson, 2 Spiers, 378;
Thomas v. Woolbridge, 2 Wood, 667;
Perkins v. Guy, 2 Mont. 16.

VI.

Plaintiff in Error is not the same corporation as the Wabash R. Co., of Illinois, the garnishee. The consolidation of interests of the Missouri and Illinois Corporations of the same name does not change their distinctive character as separate corporations.

Nashau R. Co. v. Lowell R. Co., 136 U. S. 356;
Farnum v. Blackstone Canal Co., 1 Sumn, 46;
Muller v. Dows, 94 U. S. 444;
Racine R. Co. v. Farmers, 49 Ill. 331.

VII.

The payment of the judgment in the First Garnishment Proceedings would have been a complete defense to the Second Garnishment Proceedings before the same court.

ARGUMENT.

There can be no dispute about the proposition that the courts of Missouri are bound to give full faith and credit to the judicial proceedings of the courts of Illinois, or that the courts of Illinois are bound to give full faith and credit to the judicial proceedings of the courts of Missouri. In this case, the rule of law is conceded, the facts are agreed upon, but the application of the facts to the rule is seriously disputed. **Defendant in Error contends that the proceedings in this case and the judgment herein are prior to the Second Garnishment Proceedings in Illinois and the violation of the Constitution was by the Illinois Justice of the Peace.**

IN REPLY TO SUPPLEMENTAL BRIEF OF PLAINTIFF IN ERROR.

Plaintiff in Error has filed a Supplemental Brief, practically resting its case upon the authority of **Chicago, etc., R. Co. v. Strum, 174 U. S. 710.** But the essential facts in that case, upon which the opinion of the Court is based, are entirely lacking here. When

these facts are supplied, the Strum case becomes an authority for the opinion of the Supreme Court of Missouri in this case.

It is conceded that if the Second Garnishment Proceedings were begun prior to the commencement of this action, if the debt sought to be impounded were not a judgment debt of another jurisdiction, if the garnishee in those proceedings, the Wabash R. Co. (of Illinois), were the debtor; in other words, if the corporate individual which owed the debt had been duly summoned as garnishee, if Tourville had been notified in strict compliance with the Illinois Statutes, and if the debt sued on had no "special limitations or provisions in respect to payment," but were payable generally, the Strum case might be considered as an authority in support, in part, of what we conceive to be our opponent's position in this case. But none of these essential features are found in the Strum case, and the absence of any one of them destroys that case as an authority in support of appellant's position.

This suit was not only begun prior to the Second Garnishment (*ante* Point IV.), but judgment was had in Missouri prior to the beginning of said Garnishment proceedings, making the debt sought to be impounded "a judgment debt of another jurisdiction," (*ante* Point V.). In the Strum case the debt impounded was not a judgment debt, and the Garnishment proceedings "were commenced prior to the commencement of the present [that] action." In this case, the Wabash R. Co. of Missouri, the debtor, was not the corporate individual summoned as garnishee (*ante* Point VI.); in the Strum case, the Chicago, R. I. & P. R. Co., the debtor, and corporate individual summoned as garnishee, "was not a Kansas corporation consolidated in interest, etc., with an Iowa corporation," but "was an Iowa corporation and a resident of that State."

The record does not show that Tourville was notified in compliance with the Illinois Statute (**ante Point II.**) In the Strum case, the service upon Strum was "duly had by publication in accordance with the statute of Iowa." The debt sued on in this case was "payable in the City of St. Louis and not elsewhere." In the Strum case the debt was "payable generally and could have been sued on in Iowa" by Strum. In this case, the debt being payable only in the City of St. Louis, Tourville could not have maintained his action in the State of Illinois and Flannigan, at best, could only stand upon the rights of Tourville. (**Ante Point II,** *e.*)

In the Strum case, this Court said:

> "The essential service of foreign attachment laws is to reach and arrest the payment of what is due and might be paid to a non-resident to the defeat of his creditors. **To do it, you must go to the domicile of his debtor,** and can only do it under the laws and procedure in force there. **This is a legal necessity,** and considerations of *situs* are somewhat artificial. If not artificial, whatever of substance there is must be with the debtor. **He, and he only, has something in his hands."** Upon the question of *situs* the opinion says, "all debts are payable everywhere, **unless there be some special limitation or provision** in respect to the payment" and particularly calls attention to the fact in that case that "the debt involved in the pending case had no special limitation or provision in respect to payment."

The views above expressed being the law, Flannigan's attachment could be maintained **only at the domicile of Tourville's Debtor,** The Missouri Corporation, **it only had something in its hands** belonging to Tourville. That something was wages earned in Missouri and by special limitations of contract payable at the City of St. Louis, Missouri, and not elsewhere. Why should fiction of law, as to the domicile of the Debtor garnishee, and constructive service as to the defend-

ant, be resorted to for the purpose of giving the Illinois Justice of the Peace jurisdiction, when it is but a five minute ride across the Eads Bridge to a court at the undisputed domicile of both the Debtor garnishee and defendant, where personal service could be had on both. To give the Illinois court jurisdiction in the Garnishment proceedings one of two fictions must be resorted to, either the Missouri Corporation must be fictitiously supposed to be in Illinois so that service of process could be had upon it over there, or the Illinois Corporation must be fictitiously supposed to be the individual that employed Tourville and owed him the debt. Fiction in foreign attachment laws should not be resorted to when by doing so the public acts of a sister State, as to exemptions, are violated.

In **Howland v. Ry., 134 Mo. 476,** which Plaintiff in Error says is almost exactly like this case in its facts, the Justice of the Peace in Iowa obtained jurisdiction in the garnishment case before suit was brought in Missouri and the attachment was not an attempt to impound, in Iowa, a Missouri Judgment debt. The Rock Island Ry. Co., garnishee in that case, was not a citizen of Missouri, but was of Iowa, where the attachment was instituted.

Practically the same distinctions as those pointed out in the above cases are found in all of the authorities cited by our opponents.

AS TO POINT I.

In the First Garnishment Proceedings in Illinois the Justice of the Peace did not acquire jurisdiction over the Defendant there, and Plaintiff here, under the laws of Illinois; the judgment was therefore void. This was decided, judicially by the St. Louis Court of Appeals, March 26, 1895 (Trans., p. 9). That decision was a final judgment. So whether or not the

St. Louis Court of Appeals gave full faith and credit to the judgment of the Illinois Justice of the Peace in the First Garnishment Proceedings is now *res adjudicata*. Said judgment directed the Circuit Court to enter a judgment which disposed of the case.

In **Smith v. Adams, 130 U. S. 167, loc. cit. 177,** this Court said, a judgment of reversal is final when it enters **"or directs the entry of a judgment which disposes of the case."**

And in **Winthrop v. Meeker, 119 U. S. 180,** in an opinion by Chief Justice Waite, the following language was used:

> "The litigation of the parties as to the merits of the case is terminated, and nothing now remains to be done but to carry what has been decreed into execution. **Such a decree has always been held to be final for the purposes of an appeal."**

In **Bostwick v. Brinkerhoff, 106 U. S. 53--55,** this Court said:

> "The rule is well settled and of long standing, that a judgment or decree, to be final, within the meaning of that term as used in the Acts of Congress giving this Court jurisdiction on appeals, and Writs of Error, must terminate the litigation between the parties on the merits of the case, so that if there should be an affirmance here, the court below would have nothing to do but to execute the judgment or decree it has already entered."

In **Dainese v. Blake, 119 U. S. 53, loc. cit. 55,** this Court in an opinion by Chief Justice Waite said:

> "The authorities are uniform to the effect that a decree to be final for the purposes of an appeal must leave the case in such a condition that if there is an affirmance here, the court below will have nothing to do but execute the decree it has already entered."

In **Young v. Thrasher, 123 Mo. 312,** the Supreme Court of Missouri expressed the same rule of law in the following language:

"This Court has the power, when sufficient *data* is before it, either to enter the proper judgment, or remand the case to the Court of original jurisdiction, with directions to that Court to make the proper entry. In either case the judgment is that of this Court, and is final and conclusive of all matters involved in the litigation. The inferior Court only carries into execution the judgment which has been rendered by this Court. **'Nothing is left to the judicial discretion of the Court below.'** Mower v. Fletcher, 114 U. S. 127; Black on Judgments, Sec. 34." "Rights of the parties, which may have accrued subsequent to the rendition of the original judgment, and which were not in issue in the proceeding in which it was rendered, would not be adjudicated therein, but the Circuit Court has no power to reverse, open or interfere with the judgment of this Court, in order to settle such rights. They must be determined by a subsequent suit upon a different cause of action."

Such is the effect of all the decisions cited **ante Point I.**

Therefore, the First Garnishment Proceedings in so far as they affect the rights of the parties to this suit are not under review here.

This disposes of the first three points in the Brief of Plaintiff in Error.

AS TO POINT II. CONCERNING JURISDICTION.

The Second Garnishment Proceedings were not entitled to full faith and credit in this case.

It is a well established principle of law in Illinois, Missouri, and throughout the United States, that constructive service confers no jurisdiction unless the requirements of the statute have been strictly complied with, and the Record in a particular case must show affirmatively that jurisdiction over a defendant on such service has been properly acquired. (*ante* Point II, *a.*) This is in accord with the provision of the Constitution that no person shall be de-

prived of his property without due process of law. In Illinois, as everywhere, Justices of the Peace have jurisdiction only in their respective counties (*ante* Point II, *c.*) Wyatt, the Justice of the Peace in the Garnishment Proceedings, then had jurisdiction only in his county, St. Clair County, Illinois. Nowhere does the Constable's Return show that the notices to defendant required by statute (S. & C. Ann., Ill. Stat., Chap. 11, p. 51) were posted in St. Clair County, Illinois. (See constable's return of Posting, Trans., p. 17.) There is a Workingmen's Bank and a Mr. Joyce's store in the City of St. Louis, Missouri, just across the river, and both are in what may be said to be in the neighborhood of the Justice's office, yet posting notices at these places, both outside of St. Clair County, Illinois, could not confer jurisdiction on a Justice in that county in that State.

In **Haywood v. McCreary,** 33 Ill. 459, the Supreme Court of Illinois said "in suits by attachment, where there is no personal service upon the defendant, in order to sustain the judgment, the record must show affirmatively that the prerequisites of the statute in regard to notice by publication was complied with." This language was quoted with approval in Haywood v. Collins, 60 Ill. 331, and a number of other more recent cases (See cases *ante* Point II, *a.*)

The record in the Second Garnishment Proceedings then, failing to show that defendant Tourville had been brought into Court by due process of a law, the presumption is conclusive that the judgment is void (cases Point II., *b*) and a rejection of that record in this case is not a failure to give full faith and credit to the judgment in those proceedings.

AS TO POINT III.

(*a b*) The Missouri corporation contracted with Defendant in Error to perform certain services, in

the City of St. Louis, Missouri, and agreed to pay his wages in said City, and nowhere else. (Trans., p. 5.) He being the head of a family these wages, under the Missouri Statute, were guaranteed to him for the support of his wife and children. (Trans., p. 4.) Even under the Illinois Statute the family could not be deprived of his earnings by the courts of Illinois. (*Ante* Point III, *c.*) Under the circumstances of this case we are at a loss to understand why the acts of an irresponsible, and it may be, corrupt, Justice of the Peace have been so quietly submitted to, and such persistence shown in trying to defeat the just claim of a former employee. Tourville, practically a pauper, could not go to Illinois to defend the proceedings over there. He was advised that the law was, "a garnishee must, for his own protection, see that jurisdiction of the defendant had been properly acquired by the Court." (*Ante* Point III, *a.*) He was advised that in Illinois the garnishee was bound to show his exemptions or it would be precluded from claiming the proceedings in defense of this suit. (*Ante* Point III, *b*, another distinction from the Strum case, *ante.*) It was unfortunate that the Illinois corporation should have been sued, in garnishment, by Flannigan. But that corporation did not owe Tourville anything (Point VI.) and no obligation, legal or moral, rested upon him to defend that suit. What if he was indebted to Flannigan, there was no obligation on him to submit to the jurisdiction of that court until he had been properly brought into court in compliance with the statute. "The question in these cases is not whether the defendant knew that an action was pending against him, but whether notice of that fact was brought home to him in the manner provided by statute. The law deals with notice and not with knowledge," and "jurisdiction cannot be conferred by estoppel."

(Tourville v. Wabash, 61 Mo. App. 533; Trans., p. 9.)

(*c*) At the time of the institution of the Second Garnishment Proceedings, the following statute was in force in Illinois:

> "Whenever, in any proceedings in any court of this State to subject the wages due to any person to garnishment, it shall appear that such person is a non-resident of the State of Illinois; that the wages earned by him were earned and payable outside of the State of Illinois; the said person whose wages are so sought to be subjected to garnishment shall be allowed the same exemptions as is at the time allowed to him by the law of the State in which he so resides."
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> Laws Ill. 1891, p. 141; went into force July 1, 1891;
> 2 Starr & C. Ann. Ill. Stat., Ch. 52, Sec. 22;
> Wabash v. Dongan, 142 Ill. 257.

Had the garnishee, as was its duty (*Ante*, Point III, *b.*) pleaded Tourville's exemptions, the Second Judgment under the above statute could not have been obtained.

AS TO POINT IV.

To entitle the judgment in the Second Garnishment Proceedings to the full faith and credit guaranteed under the Constitution to the judicial proceedings of the State of Illinois, those proceedings must have been instituted before the proceedings in this case were instituted. Otherwise it was the duty of the Illinois court to give full faith and credit to these proceedings in the Missouri Court.

This suit was instituted June 10, 1891. (Trans., pp. 4, 5.)

Second Garnishment Proceedings, instituted April 1, 1895. (Trans., p. 10.)

It has been the settled law in this country, since the early case of Wallace v. McConnell, before this Court in 1839, that the pendency of another suit by defendant against the garnishee in a court of another

jurisdiction will defeat the garnishment proceedings. In that case this Court used the following language which has been quoted with approval and followed by the State and Federal courts ever since, to-wit:

> "The jurisdiction of the District Court of the United States and the right of the plaintiff to prosecute his suit in that Court having attached the right, could not be arrested or taken away by any proceedings in another Court. **This would produce a collision in the jurisdiction of Courts that would extremely embarrass the administration of justice.** If the attachment had been conducted to a conclusion and the money recovered of the defendant before the commencement of the present suit, there can be no doubt that it might have been set up as a payment."
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> Wallace v. McConnell, 13 Pet. 136. Followed in Mack v. Winslow, 59 Fed. Rep. 319; Remer v. Hurlbut, 81 Wis. 32; Burke v. Hance, 76 Tex. 81.

In Mack v. Winslow, *supra*, the rule is concisely stated thus:

> "The prior pendency of a suit involving the same subject matter is the test of priority of jurisdiction."

AS TO POINT V.

(*a.*) Not only did the jurisdiction of the Missouri Court attach five years before the Garnishment Proceedings were begun in the Illinois Court, but the judgment in this case was prior to the institution of the Second Garnishment Proceedings, and **a debt due on a judgment in one jurisdiction is not subject to garnishment in another.**

Judgment St. Louis Court of Appeals, March 26, 1895. (Trans., p. 9.)

Second Garnishment Proceedings instituted, April 1, 1895. (Trans., p. 10.)

Judgment formerly entered by the Circuit Court as directed by the judgment of the St. Louis Court of Appeals, May 3, 1895. (Trans., p. 12.)

Plaintiff in Error contends that the Second Garnishment Proceeding were prior to the judgment in this case, and, therefore, entitled to full faith and credit in the Missouri Court, upon the theory, that the judgment of the St. Louis Court of Appeals reversing the judgment of Judge Withrow, left the parties "to proceed in the court below to obtain final determination of their rights." (Brief, p. 19.) If the Plaintiff in Error is wrong in this view of the law, then the cases cited under Point and Argument V. of its Brief become authorities in support of Defendant in Error's position.

The error in the position taken by Plaintiff in Error is, that it does not give credence to the universally recognized distinction between a judgment of simple reversal and one of reversal **with directions.** In the former case the parties "may proceed in the Court below to obtain a final determination of their rights," in the latter their rights have been already finally determined.

In Mower v. Fletcher, 114 U. S. 127, the State Appellate Court had rendered judgment, that the judgment of the lower Court

> "Be, and the same is hereby, reversed with costs, **with directions** to the Superior Court of Los Angeles County, to enter judgment upon the findings for the Plaintiff, as prayed for in his complaint."

In regard to that judgment, which is in all respects similar to that of the St. Louis Court of Appeals in this case; this Court said:

> "The litigation is ended, and the rights of the parties on their merits have been fully determined. Nothing remains to be done but to require the inferior Court to perform the ministerial act of entering the judgment of that Court, which has been ordered. This is but carrying the judgment of the Supreme Court, which has been rendered, into execution. Nothing is left to the discretion of the Court below."

The Supreme Court of Missouri, following the views above expressed by this Court, held the judgment of the St. Louis Court of Appeals to be a final judgment which could not be set aside by the Circuit Court (*ante* Point I, *b*) or opened up and defeated by a subsequent proceeding in another jurisdiction. (Trans., p. 28.)

As we have already pointed out, if Plaintiff in Error was aggrieved by that judgment its remedy was by appeal to this court on the constitutional ground that the St. Louis Court of Appeals had not given full faith and credit to the judgment of the Illinois Court in the First Garnishment Proceedings.

(*b*) The Second Garnishment Proceedings, then, are an attempt to impound, in Illinois, a debt due on a judgment in Missouri. This can not be done for the very cogent reasons given by the Supreme Court of Missouri, in its opinion in this case (Trans., p. 28) and upon the authority of the decisions of this court there cited.

In addition thereto we quote the language of Federal Circuit Judge McCrary, to-wit:

> "Whatever the rule may be with respect to the garnishment of a judgment debtor in the same Court in which the judgment was rendered, I am of the opinion that it would lead to a great inconvenience and to serious conflict of jurisdiction to hold that a judgment in one Court may be attached by garnishment in an other, **especially where the two Courts are of different jurisdictions.** The decided weight of authority sustains this view."
>
> Henry v. Gold Park Mining Co., 15 Fed. Rep. 649;
>
> Citing cases *ante* Point V, *a*, *b*, *c*.

AS TO POINT VI.

The Wabash R. Co., of Missouri, and the Wabash R. Co., of Illinois, are two legal entities, one a cor-

poration and citizen of Missouri, the other a corporation and citizen of Illinois. With the latter plaintiff had no dealings and it was not indebted to him in any way. The debt due him by the former could not be impounded by service of garnishment process upon the latter. Nashau R. Co., v. Lowell R. Co., 136 U. S. 356, followed, in Tourville v. Wabash, 148 Mo. 614.

> In **Nashau R. Co. v. Lowell R. Co.,** *supra*, this Court said: "Railroad corporations created by two or more States, though joined in their interests, in the operation of their roads, in the issue of their stock, and in the division of their profits, so as practically to be a single corporation, do not lose their identity, but **each has its existence and its standing in the courts of the country only by virtue of the legislation by which it is created, and the union of name, of officers, of business and of property, does not change their distinctive character as separate corporations."**

In **Muller v. Dows, 94 U. S. 444-55,** with reference to the consolidation of the Chicago & S. W. R. Co., by the laws of Missouri and Iowa, under like statutes in those states by which the two roads, of the same name, were authorized to "merge and consolidate the stock of the respective companies, making one joint stock company of the railroads thus connected," in an opinion by Mr. Justice Strong this Court said:

> "The two Companies become one. **But in the State of Iowa that one was an Iowa Corporation existing under the laws of that State, ALONE.** The laws of Missouri had no operation in Iowa."

The Wabash R. Co., then, in the State of Illinois is the Illinois corporation and notice of garnishment served upon its agent in East St. Louis does not impound a debt of the Missouri corporation, payable only in the City of St. Louis, Missouri.

VII.

It is an admitted fact that Plaintiff in Error never owed Tourville any debt other than the $81.00 sought to be impounded by the Second Garnishment Proceedings, and that said debt is the same debt that was impounded in the First Garnishment Proceedings and paid by the Wabash R. Co., of Illinois, upon an execution on the judgment in those proceedings. (Trans., p. 12). It does not require the citation of authorities to establish the fact that, had the Plaintiff in Error pleaded and proved the payment of the judgment in the First Garnishment Proceedings, a second judgment for the same debt, in the same court, between the same parties, could not have been obtained. The further fact that over five years have elapsed since the judgment in the Second Garnishment Proceedings was obtained, and that said judgment has not been satisfied, when the Wabash R. Co., of Illinois, is known to be solvent, would tend to indicate that the Second Garnishment Proceedings are a mere sham, devised for the purpose of defeating, if possible, the judgment directed by the St. Louis Court of Appeals in this case.

It follows, therefore, that the Justice of the Peace in Illinois was wholly without jurisdiction in the Second Garnishment Proceedings, and the Missouri Courts properly disregarded that proceeding, because:

(1) The proceedings in this case are prior to the Second Garnishment Proceedings in Illinois.

(2) The debt sought to be impounded, being a judgment debt in Missouri, cannot be attached by a foreign jurisdiction.

(3) The judgment of the St. Louis Court of Appeals as to the debt is *res adjudicata.*

(4) The corporate individual owing the debt was not summoned as garnishee.

(5) The Record does not show compliance with the local statutes in the posting of notice to the creditor.

And for the further reasons:

The Circuit Court had no power to consider or determine any rights of defendant which accrued pending the appeal, or to do anything not included in the duty of entering the judgment as directed.

Under the Laws of Illinois, the garnishee was bound to defend. Had it done so in this case, judgment could not have been obtained against it for the same debt it had paid under execution in the same Court under a former judgment.

Had it done so in this, judgment could not have been obtained, because under the Illinois statute the debt was exempt.

Respectfully submitted,

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